

AGENDA ITEM #8

October 10, 2003

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Future of the Delta Protection Commission
(For Commission Information and Possible Action)

Recommendation:

The Commission should review the material addressing the questions raised by the Legislative Joint Budget Committee (Appendix A, attached) and any material forwarded from the "Future of the Commission" Committee meeting to be held on October 15, 2003. The Commission should then accept public comments, and possibly adopt recommendations to forward to the Secretary for Resources, Legislature, and any other parties who are interested in the future of the Commission, for consideration as the mandated report to the Legislative Joint Budget Committee is completed.

Background:

The Legislature adopted a State budget that was signed into law by the Governor in August 2003; the adopted budget includes \$307,000 for the Commission over FY 03-04. The Commission received \$167,000 from the Harbors and Watercraft Revolving Fund when the budget was signed. The remaining funds, from the Environmental License Plate Fund, will be released after the Secretary for Resources submits a report to the Joint Legislative Budget Committee, on or before December 30, 2003, on the status of the Delta Protection Commission and its projected future workload.

The Budget Bill states:

The report shall include, but not be limited to:

- The powers and duties of the Delta Protection Commission and its accomplishments to date.
- The impact on the agricultural resources, environmental health, and recreational opportunities of the Delta in the absence of the Delta Protection Commission.
- An analysis of various ideas regarding the future organization of the Delta Protection Commission, including but not limited to mission, membership, and funding, focused on the goal of increasing cooperation and consensus, and to better reflect the State's working relationship with local governments, landowners, and other public and private entities in the Delta, given the changes that have taken place since the creation of the Commission;
 1. Plans for continued efforts to protect agriculture, wildlife habitat, and recreational activities;
 2. Ways to facilitate coordination with other agencies such as the California Bay-Delta Authority;

The Legislative Analyst's Office shall provide the Legislature with an analysis of this report and make recommendations as appropriate, on or before February 15, 2004.

Appendix A:
***DRAFT* Material Prepared by Delta Protection Commission Staff in
Response to the Questions Raised by the Joint Legislative Budget Committee:**

BACKGROUND

Why was the Delta Protection Commission Created in 1992?

When the Legislature was considering SB 1866, Senator Patrick Johnston stated "this bill is an attempt to turn back the tide on the gradual destruction of one of our State's greatest natural resources--the Sacramento-San Joaquin Delta." Various studies, reports and public hearings chronicled the Delta's decline and deterioration. Erle Stanley Garner, creator of *Perry Mason*, and Delta boater, called the Delta the "Everglades of the West".

The Delta is part of one of the largest estuary systems on the North American continent and is a critical component of the Pacific Flyway. While historically millions of migratory birds traveled the Flyway, hundreds of thousands of migratory birds still do. In addition, the Delta is part of the life cycle of several threatened and endangered fish species, including the Delta smelt, salmon, and steelhead, and permanent home to many other aquatic and terrestrial species.

Much of the Delta was originally an inland sea and tule marsh which was reclaimed starting in the 1870's for farming with the construction of hundreds of miles of levees. The Delta now supports about 500,000 acres of prime agricultural land, some of the richest soils in the world yielding close to a billion dollars of food and other agricultural crops each year.

The Delta is also a recreational mecca for power boating, sailing, wind surfing, fishing, hunting, hiking and bird watching. The historic communities of the Delta provide a look into the rich history of our State. There are over 100 public and private marinas and recreation facilities in the Delta. The numerous recreational opportunities in the Delta support over 12 million visitor days annually.

Prior to introducing SB 1866, the Delta Protection Act of 1992, Senator Johnston sponsored a series of informal meetings with various government officials representing the Delta, as well as representatives from agriculture, the development community, the environmental community, members of the Delta Advisory Planning Council, and others with a stake in the Delta. Meetings were held in Sacramento, Antioch, Rio Vista, Stockton, and Tracy. In addition, a questionnaire on Delta Protection was mailed to 450 recipients, representing government officials and agencies, environmentalists, farmers, reclamation districts, developers, and others with an interest in the Delta.

At the time the Delta Protection Act of 1992 was passed, the Legislature recognized the huge threat to the Delta resources from booming urban development. The Act was designed to "draw a line in the peat" around the Primary Zone, the key resource areas of the Delta covering 492,000 acres (of the 738,000 Legal Delta).

The remaining third of the Legal Delta (246,000 acres) was designated the Secondary Zone and left in the control of local governments. That area includes the city spheres of influence and areas that were slated for development at the time the Act was passed.

The Act did the following:

- Created the Primary Zone--the inner core of the Delta, and the Secondary Zone--the areas already largely slated for development by cities and counties.
- Established the 19-member Delta Protection Commission, with a 13-member majority of local representatives (cities, counties and groups of reclamation districts).
- Charged the Commission with drafting and adopting a long-term comprehensive resource management plan for the Primary Zone reflecting legislative standards that protect and promote the traditional Delta values of agriculture, recreation, and wildlife habitat.
- Required local governments to conform their general plans to the Commission's Resource Management Plan.
- Charged the Commission to act as an appellate body in hearing appeals that may be taken from local land use decisions on projects within the Primary Zone.

Note: The Commission has no permitting authority and no jurisdiction over land use decisions in the Secondary Zone.

As Senator Johnston told the Legislature, the Delta Protection Act would ensure that for generations to come, the Delta would remain a place for "rows of asparagus, not rows of houses; birds winging their way south, not commuters winging their way home; navigation and recreation, not urbanization."

What Led to the Need for State Action in the Delta?

The Legislature identified a need for regional planning and regulatory oversight in the Delta region, as it has in other important resource areas in the State including San Francisco Bay and Suisun Marsh, the coast, and Lake Tahoe. Earlier attempts at regional planning in the Delta had been unsuccessful, and there was an identified need to integrate numerous government programs with activities in the Delta.

In 1972, the five Delta counties voluntarily created the Delta Area Planning Council (DAPC) through a joint powers agreement, funded the Council through an assessment, and began a regional planning process. DAPC adopted its regional plan in 1976. The 19-member DAPC included five County Supervisors, five County Planning Commissioners, five County Recreation Commissioners, and four City Councilmembers. DAPC was funded through assessment of the five Counties. The planning area was the Legal Delta, including the numerous Cities in and around the Legal Delta. Due to its inability to make unanimous decisions, lack of participation by key members (County Supervisors), and budgetary shortfalls, DAPC was an ineffective entity for making regional land use decisions in the Delta. DAPC was eventually replaced in 1992 by the Delta Protection Commission, and was formally disbanded in 1994.

In January 1981, a report was released by Department of Fish and Game and US Fish and Wildlife Service recommending a "Delta Conservation Act of 1982" to maintain Delta farmlands in agriculture, protect significant Delta resource areas; ensure the public investment in Delta levees protect farmland and other significant resource areas, develop

a cooperative problem-solving relationship between State and local governments with land use regulation responsibilities remaining at the local level; develop a "special restoration area" program to expedite water-dependent development by the private sector with restoration of related natural resources; improve the level of attention to Delta resource management in local government general plan and ordinances; implement the *Delta Master Recreation Plan (1976)*, *DWR Bulletin 192 Plan for Improvement of Delta Levees (1975)*, *Sacramento-San Joaquin Wildlife Protection and Restoration Plan (1980)* and the *Delta Action Plan (DAPC, 1976)*. The proposal was to set up a special Delta Office within the Office of the Secretary for Resources to coordinate government programs in the Delta.

In May 1991, the State Lands Commission released a report on the Delta, *Delta-Estuary: California's Inland Coast, A Public Trust Report*, and held hearings on the need for a regional vision for the Delta in September 1991. Shortly thereafter, Senator Johnston drafted legislation to create the Delta Protection Commission.

MAJOR DEVELOPMENTS SINCE PASSAGE OF THE DELTA PROTECTION ACT OF 1992

In addition to the numerous programs referenced above, several new planning processes and programs have been developed in the Delta over the ten years since the creation of the Commission, which now require integration.

In 1993, the San Francisco Estuary Project completed its consensus-based Comprehensive Conservation and Management Plan (CCMP) for the Bay and Delta. The Project is now implementing the CCMP through three arms: the San Francisco Estuary Institute (science and research), the Friends of the Estuary (non-profit education), and the Implementation Committee (government implementation of the goals of the CCMP). There are regular meetings to evaluate the status of implementation. The program is administered by a small, federally-funded staff.

In December 1994, the Bay-Delta Accord was signed, which started a new planning process focused on resolution of water supply and associated environmental issues. That planning process evolved into the CALFED planning process which resulted in the signed Record of Decision in August 2000. In August 2003, the newly authorized Bay Delta Authority met for the first time to oversee and coordinate implementation of the 30-year program by State and federal agencies, and their local partners.

The CALFED planning process recognized the Delta as the "solution area" to resolving problems associated with movement of water from Northern California to Southern California through the State and federal water projects and resolving critical environmental problems. The Delta is also the key area for resolving issues of water quality, project operations, and new technology to protect endangered fish species. While many conveyance alternatives were considered by CALFED, the current vision is to continue to move the project water through the Delta waterways, and not to build an isolated water conveyance facility. In addition to addressing the immediate impacts of

the water projects on endangered fish, the CALFED plan includes an ecosystem restoration program plan to restore habitat lost in the past and to carry out all its actions consistent with the best, most current science available. CALFED committed to funding scientific studies if current data is inadequate for decision making. The CALFED vision for the Delta would result in major land use changes for ecosystem restoration, conveyance, and water storage. The 30-year cumulative impact of the proposed CALFED program could result in conversion of up to one third of the commercial agricultural lands in the Delta to habitat, conveyance, and storage uses.

The five Delta Counties and the voters have worked hard to protect agriculture in the Delta area. For example, in 1991, the voters of Contra Costa County adopted an urban limit line. The County does not allow residential development outside this line, and just ordered removal of 37 unpermitted structures from an island in the Delta in 2003 because the area was outside the urban limit line and the County would not be able to approve those structures, even if they were granted building permits and brought up to code. In addition, Solano County voters adopted a proposition that required a vote to approve a land use change within agricultural areas. Ten years after that proposition passed, the Board of Supervisors readopted the same requirement.

There has, however, been substantial growth in the cities around the Delta. In fact, since 1993, two new cities have been formed adjacent to the Delta Primary Zone--Oakley in Contra Costa County, and Elk Grove in Sacramento County. There has been substantial urban growth in the Secondary Zone, Stockton and Lathrop, directly adjacent to the Primary Zone. Stockton has included portions of the Primary Zone in the study area for its current update of the Stockton General Plan. In addition, San Joaquin County approved a "new town", Mountain House, in the Secondary Zone, directly south of the Delta Primary Zone. That project is currently under development.

RESPONSES TO QUESTIONS RAISED BY THE BUDGET COMMITTEE

The Powers and Duties of the Delta Protection Commission and its Accomplishments to Date:

The Commission is authorized to do the following:

- Hold regular, public meetings.
- Adopt rules, regulations and procedures
- Appoint advisory committees
- Establish and maintain an office in the Delta
- Appoint an Executive Director
- Promote, facilitate, and administer acquisition of voluntary private and public wildlife and agricultural conservation easements
- Apply for and accept federal, state, and other funds
- Prepare and adopt, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses in the Primary Zone
- Ensure that local general plans are consistent with the adopted resource management plan

Key Commission accomplishments to date include:

- Commission has held regular public meetings for ten years (monthly for the first four years, and every other month thereafter)
- Adopted rules, regulations and procedures
- Appointed several advisory committees of the Commission
- Established and maintained an office in the Delta since August 1993
- Appointed an Executive Director in a public meeting on May 27, 1993
- Accepted one voluntary conservation easement
- Applied for federal, state, and other grant funds
- Prepared and unanimously adopted a resource management plan for the Primary Zone and unanimously readopted the plan as regulations
- Ensured that all local general plans are consistent with the Commission's resource management plan
- Provided a forum for public discussion of issues and trends of regional significance and importance
- Served as a source of information regarding land use planning issues and matters, proposed changes in land use, proposed projects that could impact land use in the Primary Zone, public grants awarded in the Primary Zone, and land ownership in the Primary Zone
- Promoted the concept of balance as land use changes are proposed in the Primary Zone, particularly to ensure that new land uses are designed and sited to allow existing adjacent and nearby land uses to continue
- Pursued long-term solutions to protecting and enhancing the Delta levee system to ensure water supply reliability

The Impact on the Agricultural Resources, Environmental, and Recreational Opportunities of the Delta in the Absence of the Delta Protection Commission:

The Commission has visited the issue of the future of the Commission several times. As part of the preparation of the original plan, the Commission contracted with the Attorney General's office for preparation of a report on "Implementation of the Resource Management Plan for the Primary Zone of the Delta". The Commission received the plan in early 1994 and discussed the alternatives outlined in the report in public meetings.

In 1995, when the Commission faced its original sunset date, it appointed a "Future of the Commission Committee" that hosted three public meetings around the Delta to receive public input. The Committee recommended the sunset be extended for two years until January 1, 1999 to allow completion of the Commission's work associated with adoption of its regional plan and the incorporation of the plan into the General Plans of the local governments in the Delta region.

Again in 1998, the Commission actively entered the debate about the future of the Commission when SB 1075 (Johnston) was introduced. At that time, the Commission requested an extension of its sunset until January 1, 2010. The Commission was coordinating closely with CALFED and advising on the need to implement the CALFED

program in the Delta in light of the Commission's adopted regional land use plan. The Commission held another "Future of the Commission" Committee meeting to discuss other possible changes to the Act; only very minor, ministerial changes were recommended.

Once the Commission's sunset date was extended to 2010, it undertook the process of preparing a Strategic Plan. This was also an opportunity for the Commission to articulate its mission and vision, and to evaluate its successes and missed opportunities. The Commission started the process by holding a workshop, and then reviewed the work of a "Strategic Plan Committee" that met several times to craft the strategic plan. The Strategic Plan was adopted in November 2000.

Alternative 1: No State Agency:

The Legislative Budget Committee asked for information about the impact on agriculture, the environment, and recreation if there were not a Delta Protection Commission. Without a State agency with regional planning and regulatory authority, all land use decisions would revert back to the five Delta Counties and the Cities in the vicinity of the Delta. As referenced above, an earlier attempt at integration among the planning activities of Counties and Cities was unsuccessful.

Alternative 2: Issuance of Delta Protection Commission Permits:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

A potential future mechanism for implementing state planning goals for the Delta would be the addition in statute of a new permit requirement for development changes within the Primary Zone. The Commission's appellate authority provides for review of certain permits issued by local government upon challenge by an aggrieved person, but does not provide comprehensive oversight of all development approvals. Permit issuance by the Commission would be the most consistent, reliable, and enforceable means of implementing policies for development in the Primary Zone. It would be a more direct means of implementing standards. Permit conditions would specifically describe the means of compliance with elements of the Commission's plan, and enforcement action could be initiated if the terms of permits were not met. In addition, the Commission could be authorized by legislation to regulate certain State agencies' activities which are largely beyond the reach of local permitting authority. Permits could require periodic monitoring or reporting, and thus provide useful further information for future planning and resource management as well as annual reports.

Alternative 3: Expand Commission's Appeal Jurisdiction:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

The Commission's appeal jurisdiction would be expanded by providing for all development approvals of non-agricultural activities in the Primary Zone to be either appealable to or reviewed by the Commission. This would provide more extensive review responsibility to the Commission, but less investment of resources than would be needed for issuing Commission permits. The ability to charge fees for new permits or for required review could be included in statutory changes.

Also, some interest has been expressed in strengthening the role the Commission plays in the Secondary Zone, particularly related to evaluating the cumulative impact the extensive urban development around the Delta is causing to the Primary Zone's land and water resources. One option would be to extend the Commission's appeal authority over local land use decisions in the Secondary Zone that would negatively impact Delta resources, including its land, water, and levees, rather than keeping the Commission's comments on these projects advisory only, as is currently the case.

Alternative 4: Develop a Voluntary Interagency Agreement to Achieve Comprehensive Regional Planning in the Delta:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

Councils of Governments (COG): COGs are agencies formed by cities within a single county, or by two or more counties, for the purposes of planning in a regional context. This jurisdiction limit makes their use for planning purposes in the Delta Primary Zone unlikely. COGs derive their statutory authorization from **the State's regional planning law, Government Code Section 65060 et seq.**, a tool intended to provide for the "orderly development of the urban regions of the State in which large segments of the State's population are concentrated." Regional plans developed by COGs through voluntary agency participation are advisory rather than binding. They would neither displace requirements that each city and county adopt a "comprehensive, long-term general plan for the physical development" of lands within its jurisdiction, nor substitute for the required elements of these general plans. The regional planning law also authorizes regional planning districts or COGs to perform studies related to problems of growth, development, and maintaining the beauty and prosperity of the area, and to facilitate cooperative problem solving to address development conflicts within the region. COG governing boards are composed almost entirely of elected officials from Cities and Counties. This limited composition would deny any significant regional planning role to single subject matter local agencies and to affected state agencies.

Joint Powers Agreements (JPAs): JPAs are authorized by State statute (Government Code Section **6500 et seq.**). They are used for a wide variety of purposes by agencies which exercise one or more of the same powers (common powers) and which cede authority to exercise one or more of their common powers to a separate entity. Basically two or more public agencies may by agreement jointly exercise any power common to the contracting agencies. The statute contains a very broad definition of "public agencies" for purposes of such agreements. The definition includes federal, state, and local agencies, special districts, public corporations, and adjoining states, and thus extends to the Delta Protection Commission and each agency represented on it.

A JPA may either be for a definite term or extended until rescinded or terminated, as provided by the agreement. A joint powers entity is separate from its member entities and possesses the common power authorized by the JPA to fulfill its purpose. The agency may sue or be sued if it is given the authority to do any or all of the following: make or enter into contracts, engage agents or employees, acquire or administer buildings or other property, and incur debts, liabilities, or obligations. A JPA may create a separate administrative or executive entity. The parties may choose one or more of their members to administer the JPA, or may create or designate a commission, board, person, firm, or corporation, including a nonprofit corporation, to do so. Additional requirements apply if one or more of the parties is a State agency.

The parties may provide for contributions from their respective treasuries, payments of public funds, advances of public funds, or the use of personnel, equipment, or property from one or more of the parties. JPAs are authorized to issue revenue bonds to pay the cost and expenses of acquiring or constructing a project or conducting a program. These provisions have traditionally been used to fund revenue producing facilities such as exhibition and fair buildings, buildings for sports events, waste treatment facilities, and mass transit facilities. They have also been expanded to include: public buildings, regional or local public parks and recreation areas, libraries, parking garages, police or fire stations, recycling programs and facilities, and other public improvements.

Memoranda of Agreement or Understanding (MOA or MOU): Memoranda are essentially contracts between two or more parties--public or private entities. MOUs represent agreements to perform tasks or to undertake cooperative efforts on terms agreeable to all the parties. There are no specific statutory restrictions on their development and implementation, except that participants may not agree to exercise powers that they do not have. Funding arrangements are left entirely to the parties. Such agreements may be useful for cooperative planning efforts, or for implementing specific tasks and for undertaking or managing cooperative projects.

Alternative 5: A Separate Appellate Board:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

The Commission's appellate function could be assigned to a separate board created solely to hear and determine appeals. A smaller, five to seven member, board could be designated to review appeals. The board could be appointed from the existing governing board, or could be entirely separate from the Commission. Members could be selected to represent various interests generally represented on the Commission, or could be selected based on expertise, training, knowledge of and interest in Delta issues, or other criteria which might be set forth in legislation.

The jurisdiction of the appellate board could be same as the Commission, or could be made broader such as by permitting review of State agency project decisions in addition to local government decisions. In State government it is relatively rare to find policy functions separated from a related appeal function. It is not unusual to find policy boards that adopt regulations which are then implemented by departments, whose decisions may be appealed to the policy board. There are local government examples of hearing boards

which are separate from a governing body and are empowered to review various matters.

Alternative 6: Enhance Existing Conservancy Functions:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

The Delta Protection Act grants the Commission authority to perform conservation functions including the promotion, facilitation, and administration of the acquisition of voluntary private and public wildlife and agricultural conservation easements in the Delta. The Act also promotes conservation strategies. Conservancy actions could include: acquisitions of real property; acquisition of easements; acceptance of donations; development and implementation of transfers of development rights; development of mitigation banks; and/or development of voluntary management agreements for lands in the Primary Zone.

A variation would be creation of a new Delta conservancy as a separate governmental entity. Legislation could divide the Commission's responsibilities and assign the conservancy functions to a new separate entity.

Another option would be to transfer the ownership of various real property interests to one of the existing nonprofit entities in the region, or to facilitate formation of a new nonprofit "partner" organization that would provide assistance in maintaining agricultural easements and habitat lands in the Primary Zone in accordance with the Commission's adopted plan.

Local agencies, including reclamation districts, local park districts, and resource conservation districts, could also serve as land management agencies.

An Analysis of Various Ideas Regarding the Future Organization of the Delta Protection Commission, Including but not Limited to Mission, Membership, and Funding, Focused on the Goals of Increasing Cooperation and Consensus, and to Better Reflect the State's Working Relationship with Local Governments, Landowners, and Other Public and Private Entities in the Delta Given the Changes that have Taken Place Since the Creation of the Commission:

Existing Mission:

The Commission adopted a mission statement as part of its strategic plan (November 2000):

The mission of the Commission is to guide the protection of the Delta's unique natural quality, cultural viability, economic vitality, and recreation opportunity through:

- *Protection, maintenance, and enhancement and restoration of the overall quality of the Delta environment including agriculture, wildlife habitat, and recreational activities;*
- *Assurance of orderly, balanced conservation and development of Delta land resources; and*

- *Improvement of flood protection to ensure an increased level of public health and safety.*

Existing Membership of the Delta Protection Commission:

Research leading to the Delta Protection Act of 1992 identified a key problem with the 19-member DAPC; the JPA which created DAPC required that all five of the County Supervisors vote in support of an action, regardless of the votes of the other 14 members. The 19-member DAPC included: five County Supervisors, five County planning commissioners, five County recreation commissioners, and four City Councilmembers. Key questions about DAPC membership included:

- Should the membership of DAPC be expanded to include broader representation?
- Should DAPC be empowered by State legislation to mandate Delta regional protection?
- Should regional decisions made by DAPC require only a majority vote?
- Should DAPC's role continue to be advisory only, or should it be empowered and strengthened to have broader enforcement authority?
- How should DAPC be funded and staffed?

The original proposal for membership of the Delta Protection Commission included 19 members, including:

- Five County Supervisors, one from each of the five Delta Counties.
- Three City representatives from Delta cities.
- Three Members from Delta Reclamation Districts.
- Eight State Government Officials.

As finally adopted in the Act, the Commission's 19-members include:

- Six State agency directors (who are Governor's appointees) or their designees.
- Five County Supervisors (who represent supervisorial districts in the Delta).
- Three City Councilmembers (who represent cities in and around the Delta).
- Five Reclamation District representatives that represent the north, south, east, and west regions. The Reclamation District representatives are elected by the Trustees in each region.

Other membership models for regional planning agencies:

The San Francisco Bay Conservation and Development Commission, the first regional planning agency created in 1965, includes:

- Two federal members (Corps of Engineers and Environmental Protection Agency).
- Five State agency representatives (Business and Transportation, Resources, State Lands Commission, San Francisco Regional Water Quality Control Board, Finance).
- One County Supervisor from each of the nine Bay Area counties.
- Four City Councilmembers from north, south, east and west.

- Seven public members who are residents of the San Francisco Bay Area; five appointed by the Governor, one appointed by Senate Rules Committee and one appointed by Speaker of Assembly.

Another regional planning entity, the California Coastal Commission created in 1972, includes six public members and six local government officials (three County Supervisors and three City Councilmembers) that represent the six coastal regions. The voting membership is appointed: four by the Governor, four by the Speaker of the Assembly, and four by the Senate Pro Tem. In addition, four non-voting members are the Secretary for Resources, Secretary for Business and Transportation and Housing, Chair of the State Lands Commission, and Secretary of the Technology and Commerce Agency.

Existing Funding of the Delta Protection Commission:

The Commission was originally funded through a loan from the Environmental License Plate Fund and fines on violations of certain fishing and boating laws. The fines provision was repealed. The Commission repaid the ELPF loan by directing unexpended funds annually toward repayment of the loan. The Commission has never been funded with General Funds; it has only received special funds (ELPF funds and Harbors and Watercraft funds). The Commission has twice, once in 1994 and once in 2002, suggested a new personalized Delta License Plate as a permanent source of funds for the Commission and its programs. The proposal has not received administrative support.

The Commission's funds have remained at about \$300,000 per year between the ELPF and Harbors and Watercraft funding sources, and only after the Commission became a permanent agency did the staff change from two permanent full time employees and 1.4 temporary employees to three permanent full time employees. The limited funds available to the Commission has limited the Commission's ability to carry out new research and planning work to update its Regional Land Use Plan or implement other tasks identified in the Delta Protection Act of 1992.

Potential Funding Sources and Mechanisms:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

The Commission is authorized to receive State funds, federal funds, and donations from private sources. The Commission may wish to consider seeking legislation to create a new funding source such as a special interest license plate. Other possible funding sources include various kinds of property assessments and assessment districts: habitat conservation assessments, Landscape and Lighting Act assessments, regional park and open space districts, and resource conservation districts. These funding tools are principally available to local governments. The Commission may wish to consider seeking special legislation to authorize regional assessments in the Delta and issue bonds to finance construction of improvements.

Goals of Increased Cooperation and Consensus, and to Better Reflect the State's Working Relationship with Local Governments, Landowners, and Other Public and Private Entities in the Delta Given the Changes that have Taken Place Since the Creation of the Commission:

Existing Commission Actions to Promote Cooperation and Consensus:

The Commission has resulted in increased cooperation and consensus among its members and its member agencies. The Regional Plan was adopted unanimously in 1995, and readopted as regulations unanimously in 2000. The 2000 vote had only five members who voted on the original plan in 1995.

The Commission has extensively used Citizens Advisory Committees and Commission Committees to gain input from the Delta community and to promote cooperation between agencies and "stakeholders" in the region. All meetings of Committees are fully noticed and open to the public. The Commission's meeting dates and location are published for the entire year; the Commission meetings have been held in the same location for nine years. The Commission meeting notices and meeting materials are posted on the Commission's website ten days prior to meetings.

The Commission is a central location for information about the Delta and serves as a resource to State and federal agencies who conduct activities in the Delta, students, project developers, special interest groups, out of area visitors, recreational boaters and fishermen, and many others. There are regular requests for information and speaking engagements from Commissioners and staff.

The Commission has volunteered to host meetings, to assist in promoting meetings, and has actively participated in planning processes hosted by others. One major change that has taken place in the Delta since 1993 is the creation of two new cities, Oakley and Elk Grove, on the Delta's periphery. The Commission reviewed documents and maps, commented on various proposals, attended meetings and discussed the Commission, its regional plan, and its mandate from the Legislature, invited presentations from knowledgeable individuals, and ensured that the Commission was briefed on these matters at public meetings.

The Commission has actively participated in the CALFED planning process since 1995, attending meetings, providing information, commenting on alternatives, hosting meetings, serving on panels, serving on the Management Group, serving on the Policy Group, and actively promoting the Legislature's vision for the Delta in the CALFED planning process. The Commission has a CALFED Committee and has adopted comments on critical planning documents, including the Draft and Final Programmatic Environmental Documents.

Another major change since the creation of the Commission has been the acquisition of large tracts of land in the Delta for the purpose of promoting restoration/creation of wildlife habitat (Prospect Island, Liberty Island, Little Holland Tract, Sherman Island, Twitchell Island, Staten Island, McCormack-Williamson Tract, Yolo Bypass). The

Commission has taken an active role in seeking comments from the general public, identifying opportunities and partnerships, promoting balance between Delta land uses, preparing written comments, speaking at public hearings, participating in working groups, and using early projects as learning experiments to ensure that new projects avoid similar pitfalls. The Commission supports public/private partnerships, multiple use of lands, open and public planning and decision-making processes, and minimizing fiscal impacts to local governments and special districts, while maximizing opportunities to meet regional needs for agriculture, wildlife habitat, recreation, and flood control.

Possible Delta Coordinating Council:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

The Commission could assist in the formation of a Delta Coordinating Council including representatives of the Commission, management agencies such as Resource Conservation Districts which are not represented on the Commission, and nonprofit organizations active in the Delta. A coordinating council could provide an efficient forum in which to exchange information and to provide coordination of overall stewardship functions to be performed within the Delta Primary Zone. The Council could forward reports to the Commission. A council could also develop a coordinated strategy for funding stewardship programs in the Delta.

Possible Resources Database and Information Exchange:

[From Implementation of the Resource Management Plan for the Primary Zone of the Delta, 1994]

For purposes of assisting in development project reviews, the Commission could maintain a database of property ownership and land use designations as well as proposed changes and development projects within the Primary Zone. The Commission could make technical data available for RCDs and others concerning compatible wildlife and agricultural activities in the Primary Zone. This could occur in conjunction with the activities of one or more of the RCDs that are active in the vicinity of the Primary Zone. The Commission could also provide visitors information on recreation opportunities in the Primary Zone. One or more visitor centers could provide general information on resources within the Delta, information on equipment rentals and public access to wildlife areas, recreation facilities, waterways, local maps, listing of visitor-serving facilities, and information on stewardship programs active within the Delta area.

a) Plans for continued efforts to protect agriculture, wildlife habitat, and recreational activities:

The Delta Protection Commission is actively involved in major planning efforts in the Delta region:

- The Commission is working with American Farmland Trust on a study of Delta agriculture; funding is provided by the American Farmland Trust.
- The Commission is participating in an update of the Central Valley Habitat Joint Venture Basin Plan, with State and federal agencies and non-profits.
- The Commission received funding from the Department of Boating and Waterways to plan for Delta recreation; this funding channeled through the Department of Boating and Waterways is made up of federal funds. The Commission has been working with a Recreation Citizens Advisory Committee

and other "stakeholders" and interested citizens in anticipation of this planning effort. The report is due at the end of 2004.

- The Commission is providing information and reviewing drafts of CALFED's Delta Region Ecosystem Restoration Implementation Plan, a more specific application of CALFED's programmatic Ecosystem Restoration Program Plan (DRERIP) due at the end of 2004.
- The Commission mails its meeting notices and newsletters to a mailing list of approximately 400 individuals, organizations, districts, and agencies in the Delta area. All meeting notices, newsletters, and staff reports are posted on the Commission's website, along with other documents and reports prepared by the Commission.

b) Ways to facilitate coordination with other agencies, such as the California Bay Delta Authority:

- The Delta Protection Commission has participated in the CALFED planning process since its first meeting in 1995.
- The Delta Protection Commission has participated on the CALFED Management Group and the CALFED Policy Group since Fall 2000.
- The Delta Protection Commission voted in September 2003 to participate in the Agency Coordination Team, created after the new Bay Delta Authority was formed.
- The Delta Protection Commission is assisting in preparation of a Delta Implementation Plan with the Bay Delta Authority.
- The Delta Protection Commission staff meets and talks with staff of the five Delta counties and other local agencies to promote communication and coordination in the Delta region.

Appendix B: Timeline of Commission Activities

1992:

- September 23, 1992: Governor signed SB 1866, Delta Protection Act of 1992.

1993:

- January: Delta Protection Commission members sworn in and first meeting held; meetings held monthly for next four years.
- DPC Conflict of Interest Regulations filed with OAL
- DPC Regulations Addressing Appeals to the Commission filed with OAL
- Staff hired: Executive Director and Administrative Staff
- Office in Walnut Grove opened; furnished at no State expense
- Three Subcommittees created: Administration and Operations, Budget and Finance, and Legislation.
- Three Citizen Advisory Committees appointed: Environment, Recreation, and Agriculture
- August: Adopted planning program for preparation of regional plan
- October: Tour of Delta waterways by boat
- December: DPC received and held a hearing on Background Report on Delta Environment

1994:

- January: DPC received and held hearing on Background Report on Utilities and Infrastructure
- January: DPC received and held hearing on Background Report on Levees
- January: DPC received and held hearing on Background Report on Land Use and Development
- February: DPC received and held hearing on Background Report on Delta Water Issues
- February: DPC received and held hearing on Background Report on Agriculture
- March: Commission Hearing Regulations filed; operative April
- May: DPC received and held hearing on Background Report on Implementation of the Resource Management Plan for the Primary Zone of the Delta (written by Attorney General's Office)
- May: DPC received and held hearing on Background Report: Recreation and Access Study (prepared by Brady and Associates)
- July: Released *Draft Land Use and Resource Management Plan for the Primary Zone of the Delta*; four public hearings held July and August
- September-December: Discussions of revisions to draft Plan.
- August: Commission Regulations for CEQA Compliance filed; operative August
- December: DPC adopted Background Report on Marine Patrol, Boater Education, and Safety Programs
- DPC received voluntarily-offered Conservation Easement from MTC Staten Ranch on several channel islands enhanced for wildlife habitat
- DPC sponsored clean-up on Coastal Clean Up Day

- DPC participated in research project with Ducks Unlimited, Contra Costa Vector Control District and San Joaquin Vector Control District to study seasonal flooding of agricultural lands for waterfowl habitat and impacts on production of mosquitoes and other insects.
- DPC adopted resolution of support for Medford Mitigation Bank, the first mitigation bank in the Delta area.
- DPC sponsored San Francisco Estuary Project's regional meetings in the Delta area to forward the goals of the *Comprehensive Conservation and Management Plan* for the Bay and Delta.
- DPC sponsored a meeting of Open Space and Land Trust groups in the Delta region to discuss common programs and goals
- One appeal was filed; the Commission held two hearings and upheld the action of the Board of Supervisors
- *December: CALFED Accord signed*

1995:

- February 23: DPC unanimously adopted "Land Use and Resource Management Plan for the Primary Zone of the Delta"
- March: DPC staff prepared first monthly memo describing pending local, state and federal projects in the Delta area.
- October: Suit filed by BioGro over Utilities and Infrastructure Policy P-3 as Regulation (no new sewage treatment plants or sludge disposal allowed in the Primary Zone), stating the Policy is a regulation, heard by Judge. Commission lost the suit and set aside Policy P-3.
- DPC concurred with local government submittals re: conformance with Plan from City of Pittsburg, Yolo County, Solano County, San Joaquin County, and Contra Costa County.
- DPC held three public meetings to receive input on the Future of the Commission; in December the Commission voted to seek two year extension of sunset (from January 1, 1997 to January 1, 1999) to complete tasks in Delta Protection Act of 1992
- DPC held public hearings and adopted a position regarding the San Luis Drain to protect Delta resources
- DPC participated in a grant program with Ducks Unlimited
- DPC sponsored clean-up on Coastal Clean Up Day
- DPC participated in research project with Ducks Unlimited, Contra Costa Vector Control District and San Joaquin Vector Control District to study seasonal flooding of agricultural lands for waterfowl habitat and impacts on production of mosquitoes and other insects.
- DPC sponsored San Francisco Estuary Project's regional meetings in the Delta area to forward the goals of the *Comprehensive Conservation and Management Plan* for the Bay and Delta.
- DPC worked with two consultants to prepare and manage a GIS regarding land use changes in the Delta.
- DPC contracted with Department of Parks and Recreation to prepare a statistically valid recreational use survey of the Delta.

- DPC adopted positions of support for timely processing of levee repair claims and support for use of imported dredged material for levee maintenance.
- DPC set up new subcommittees: Levees, Recreation Users Study Oversight Committee, San Luis Drain Committee, and Future of the Commission Committee.

1996:

- Legislature approved two year extension of sunset, until January 1, 1999 and allows DPC to meet every other month.
- September: DPC approved proposed regulation (adopting Utilities and Infrastructure Policy P-3 as a Regulation)
- December: Files Rulemaking File adopted Utilities and Infrastructure Policy P-3 as a Regulation (DPC directed staff to proceed in February, three public hearings held March and April, special workshop session in April, vote to adopt in September)
- Local Governments completed amendments to General Plan to ensure conformance with Commission's Plan: San Joaquin County, Contra Costa County, City of Rio Vista, Sacramento County and Solano County
- DPC directed staff to work with East Bay Regional Park District and Department of Fish and Game re: protection of historic seasonal hunting on the waters of Big Break (EBRPD acquired portions of Big Break)

1997:

- January: 10% penalty assessment on fines imposed for violations in the Delta no longer collected.
- January: Approved City of Stockton's General Plan amendment
- January: OAL approved Rulemaking File re: Policy P-3
- March: Approved Yolo County's General Plan amendment
- May: Approved City of Stockton's amended General Plan amendment
- August: Department of Parks and Recreation completed and submitted "Sacramento-San Joaquin Delta Recreation Survey", commissioned by DPC and Department of Boating and Waterways
- September: Approved Contra Costa County and Yolo County's General Plan amendments
- Commission directed AG to prepare and file with the Supreme Court a "Friend of the Court" brief in the case Akins vs. People of the State of California.
- September: Sent letter to US Fish and Wildlife Service outlining issues and concerns associated with installation of fish screens on Delta agricultural water intakes and supported Department of Fish and Game's adopted position on installation of fish screens on small intakes.
- November: Completed and released "Inventory of Recreational Facilities"
- Worked with Big Break duck hunters to address concerns associated with acquisition of water-covered lands by East Bay Regional Park District. Participated in several meetings and assisted in promoting communication and solution development and implementation (1998, 1999).
- Adopted position of support for SB 172, legislation to fund a program to remove abandoned vessels from the Delta waterways.

- Set up a web site for easy access by the public to Commission maps and other materials.

1998:

- January: Approved San Joaquin County General Plan amendment.
- March: Adopted written comments on the CALFED Programmatic EIS/EIR
- May: Approved Sacramento County General Plan amendment
- May: Approved Solano County General Plan/Ordinance amendment
- May: Adopted format for review and comment on CALFED Ecosystem Restoration Projects when CALFED staff requests public review of a proposed project
- July: Reviewed creation of new City of Oakley on edge of Delta Primary Zone; recommended realignment of city limits to minimize overlap in Primary Zone.
- November: DPC releases "The Economic Impact of Recreational Boating and Fishing in the Delta" (prepared by U.C. Berkeley Department of Agricultural and Resource Economics)

1999:

- January and July: DPC briefed on proposed North Delta National Wildlife Refuge; comments submitted
- April: Department of Finance concurred that the DPC, to the best of its ability, had repaid the original \$250,000 loan from the Environmental License Plate Fund through designation of penalty assessments and crediting of unexpended funds from the annual budget process (Note: repayment of the original loan was a condition of the Delta Protection Act of 1992).
- May: DPC receives first memo on Acquisition of Lands in the Primary Zone by Public Agencies and Nonprofits
- July: Contracted with Department of Fish and Game and Regional Water Quality Control Board to assist in CALFED-funded study to develop Delta Dredging and Reuse Strategy (project completed 2002)
- August: DPC adopted comments on CALFED's Draft EIR/EIS

2000:

- February: DPC held Strategic Planning Work Shop
- July: DPC adopted comments on CALFED's Final EIR/EIS
- September: DPC voted to sign CALFED Interim Governance Memorandum of Understanding
- September: DPC, along with other CALFED agencies, sued after CALFED ROD signed
- November: DPC adopted Strategic Plan
- November: Started providing all staff reports for Commission meetings to website
- December: DPC readopted Policies of the Land Use Plan and adopted the Policies as Regulations (required by Office of Administrative Law)
- *July: CALFED released Final EIR/EIS*
- *August: CALFED Record of Decision signed*

2001:

- January: DPC became permanent agency (sunset removed from Delta Protection Act of 1992)
- DPC agreed to sign CALFED Permit Clearinghouse Memorandum of Understanding
- March: Proposed regulations submitted to OAL; approved May
- DPC funded preparation of a scoping document to be used for preparation of a Delta Recreation Master Plan
- May: DPC appointed a Recreation Citizens Advisory Committee
- May: Staff presented update on agriculture
- July: DPC appointed Agriculture Subcommittee
- August: DPC adopted comments on Department of Fish and Game acquisition of 12,808 acres of land in Yolo Bypass; the Commission supported the acquisition but asked that condition be attached to management of the land.
- September: American Farmland Trust (AFT) asked DPC to partner in study of Delta agriculture
- September: DPC received scoping document for Delta Recreation Master Plan from consultant
- November: DPC voted to partner in AFT's study of Delta agriculture
- November: DPC directed staff and counsel to work with CALFED and DWR to transfer additional responsibility to the Commission for overseeing implementation of land management of Staten Island
- November: Suit against DPC after CALFED ROD signed was dismissed

2002:

- January: DPC appoints Agriculture Subcommittee as Steering Committee for preparation of an application for a Resource Conservation and Development Council in the Delta
- January: DPC voted to fund development of an Interim Strategy for Recreation, due to lack of funding for preparation of a Delta Recreation Master Plan
- July: DPC briefed on completed Delta Dredge Reuse Strategy (CALFED funding 1998)
- September: AFT announced it would fund a study of Delta agriculture (requests for funding from Department of Conservation and CALFED were denied)
- September: DPC approved agreement with DWR defining a role for the Commission to oversee activities and land use changes on Staten Island
- September: DPC adopted position of support for CALFED BDPAC Working Landscapes program
- October: DPC submitted application for a Resource Conservation and Development Council in the Delta to U.S. Secretary for Agriculture

2003:

- March: Issues of redundancy raised in Assembly Budget Hearing
- June: Legislative Analyst's memo on DPC and BDA released.

Key ongoing programs:

The Commission and its staff continue to:

- Actively participate on the Delta Levees and Habitat Advisory Committee and other Delta Levee work groups to ensure the long-term viability of the Delta levees. From 1995 through 2002, DPC staff voluntarily prepared meeting notices, minutes, and maintained mailing list for Delta Levees and Habitat Advisory Committee.
- Review and comment on local, State and federal projects proposed in and around the Delta Primary Zone to ensure conformance with the Delta Protection Act and the Regional Land Use Plan. Circulate the pending project list to Delta local governments and post on web site.
- Review and comment on proposed land acquisition and ownership in the Delta Primary Zone to ensure that acquisition and changes of land use provide for public review and input, and will not adversely impact existing land uses.
- Review and support pending State legislation that would promote the Commission's mission in the Delta Primary Zone.
- Actively review and prepare comments on CALFED planning and implementation that would impact land uses in the Delta Primary Zone. Present adopted Commission positions to CALFED agencies. Provide forum for public review of proposed projects and present position of Delta landowners.
- Review all monitoring and decision-making documents on the San Luis Drain/Grasslands Bypass Projects and report to Delta Protection Commission to ensure options protect Delta water quality for habitat, recreation, and agriculture users.

Appendix C: Commission Implementation of Delta Protection Act of 1992

Code Section	Description of Task	Status of Implementation
29750	Commission shall meet at least bimonthly; open to public; noticed newspaper	Implemented
29752	Adopt rules, regulations and procedures for organization and operation	Implemented
29753	Appoint advisory committees; seek advice and recommendations from advisory committees appointed by local government	Commission appointed advisory Committees to assist in preparation of Plan, and continues to convene advisory committees as needed. Commission has several active Committees. Commission seeks input from local groups on specific projects or special planning programs
29754	Establish and maintain an office within the Delta	Implemented
29755	Appoint Executive Director, who shall appoint employees	Implemented; Three full time, permanent employees
29756	May promote, facilitate, and administer the acquisition of voluntary private and public wildlife and agricultural conservation easements in the Delta	DPC holds one conservation easement. DPC reviews existing easement programs. No funds currently available to DPC to pursue easements. Proceeding with Delta agricultural study with AFT to develop a Deltawide strategy for agricultural easements to implement programmatic mitigation for CALFED program impacts to agricultural land in the Delta and protect and enhance wildlife-friendly agricultural values.
29757	Apply for and accept federal grants or other	DPC applied for grants in past; none received.

	federal funds and receive gifts, donations, rents, royalties, state funds from bond sales, the proceeds of taxes or funds from any other state revenue sources, or any other financial support from public or private sources.	
29760	Prepare and adopt and thereafter review and maintain a comprehensive long-term resource management plan for land uses within the Primary Zone of the Delta	Plan adopted February 1995. Readopted as regulations December 2001.
29763	Within 180 days of adoption of the plan or any amendments by the DPC, all local governments shall submit to the Commission proposed amendments that will cause their general plans to be consistent with the Commission's plan.	Implemented
29766	Nothing in this division shall deny the right of private or public property owners and local governments to establish agriculture preserves and enter into contracts under California Land Conservation Act of 1965 or apply other enforceable restrictions or zoning within the Primary Zone or Secondary Zone.	In conformance
29767	Commission may not exercise the power of eminent domain in implementing the resource management plan, unless requested by the landowner.	In conformance